

Panelists: David Carey, JH Torrance Downes, Keith B. Neilson, PE, Dr. John Pinto, Gail Robinson

Moderator: Steve Bliven

Gail Robinson – Ash Creek Conservation Association

Neighbor pointed out dock proposal in pristine area with osprey and other wildlife and open space. Organization formed – 501C-3 with Bridgeport and Fairfield members. “Can’t stop a dock” – was shocked by level of proof needed to show environmental harm from one dock. Success in minimizing size of dock. Issues such as prop wash and impacts from vessels not allowed in record. Cumulative impacts should be addressed at local level – P&Z. Very little support on local level due to other “issues” taking priority in Bridgeport. Fairfield more amenable to discussion and support. Shellfish commission voted in favor, conservation opposed. “People have a right to build docks”. Wants to get record straight. Do people really have a right to cigarette boat outside their house? Misinformation out there – wants discussion. Legislative act to protect Ash Creek may be only option.

Steve Bliven: Right to dock vs public trust doctrine. Inter-municipal issues? How to bring public values into play?

John Pinto – Norwalk HMC and President of CT HMA – Review of permits for Norwalk Harbor. Established a HMP for Norwalk to give them more say as to what happens in harbor. Purview – evaluate each dock and pier on a case-by-case basis. Balance right of property owner and reasonable access to water for unencumbered navigation.

Commercial and recreational use of harbor – try to balance by working with shellfish commission. Needs of community and applicant – consistency with HMP. Docks resting on bottom – no docks should do this. Detrimental to shellfish and associated substrate. Damaging nutrients and habitat. Importance of applications to be reviewed by local HMC’s. Changing vistas. Meet with applicants and agents during development of dock application to circumvent issues up front. Have right to comment to DEP – head off issues prior to getting application to DEP. Streamline process and provide guidance as to local flavor. State statutes dictate that recommendations by HMC with approved HMP’s are binding on DEP and must be taken into consideration. Commercial docks and piers – plans prepared by a PE, should apply to private residential applications as well. Third-party sign off to ensure safety. As-build survey or some assurances that dock is built as designed. Compliance with DEP permit? DEP to see HMC as an added arm – they can assist with this process. Encroachment after the fact is an issue.

John Frank – clarification – DEP – HMC recommendations are binding on DEP if state-approved HMP – not just recommendations that are advisory.

Steve Bliven: Nobody addresses the structural integrity of docks – impact of docks from storms? Question of intersection between public trust and private prop. Rights?

Keith B. Neilson, P.E. – Docko – 20 years of experience as a consultant – many different applications in NY, CT, RI. Struck me that “checklist” they developed for clients is useful. Things go right and wrong on shorefront – dreams and desires along shorefront. Willing and able to assist with client’s desires, if reasonable. They are working for client as well as all of the public. Express interest of property owner can’t be to the detriment of public at large. Requires proper balance – community and local flavor. Meet with clients to discuss natural resources, navigation, waves, moorings, type of project/vessel/facility required? Water depth is often an issue. Understanding of program guidelines – different in each state. States provide guidance on these standards. Also stress legal limitations of property owners use and rights of public as well. Utilized accurate surveys of properties. Important to make decisions based on accuracy. Choosy about who surveyor is. Make sure clients are informed about their riparian/access rights. Some things Docko would like to see brought into programs at DEP – docking facilities at right water depth. 3 feet of water is about right depth for access – motor strikes and boats resting on bottom generally won’t happen at this depth. 100 square foot float is very difficult design guideline to achieve. Naval architects cite safety concerns with this size. Dinghy docks and moorings are not generally advantageous. Mooring takes up more space. Waterfront property owners should have access to docking facility.

Steve Bliven: Important points. Important to have those who build docks in the room. Too often only have regulators and environmental folk, but not those who are caught in between trying to meet dreams of public and regulatory restrictions.

JH Torrance Downes, CRERPA regional planner, former DEP staff: Nine towns of lower CT river important part of work done by CRERPA. Workshop at CT River Museum. In response to dock applications in Chester – through a grant from LIS Fund, did a study of proliferation of docks in lower CT river – compared different state programs. 25% of lower river properties that could have docks did have them. Looked at history of dock applications, estimate 25 years we will have build-out. Contrasted programs in different states – CT fared very well in terms of review process. Recommended that based on regulatory scene in CT, the best opportunity to do dock management is through HMC’s. Passed legislation with assistance from CT State Representative James Field Spallone to put this together – 4 towns to develop standards – Joel Severance involved for Chester. That effort is stalled. Second effort through grant from NOAA – developed 7 classifications of SAV, intertidal flats and developed scoring process associated with impacts. ID which part of river is more sensitive. Town of Old Saybrook and Old Lyme decided to go ahead and develop standards for their towns. If statute is silent, they why can’t we do it? Work used by these two towns is based on taking shoreline by segments with different characteristics – apply different standards to each area. DEP not really able to deny permit applications. If you have planning studies that lead to standards, then reasonable access could be non-structural. You will get reasonable access, but due to environmental and visual impacts, may not be structural access. Balance with environmental and navigation impacts. Wants to explore non-structural access solutions.

David Carey – Director of Bureau of Aquaculture/DOA – 2004 statute change gave DOA ability to comment and make a determination of significant impacts on shellfish from proposed in-water activities. Applicant has opportunity to revise application to make it more consistent. Works with staff – experienced. Prior to 2004 change, said “no” to many applications. Now work to assist in revision to project.

Steve Bliven: Issues regarding linkage to public trust and riparian rights
HMC have say in process, but needs better coordination with DEP
Establish local standards and link to State standards
Not unusual that these things conflict – public trust vs environmental impact
ACOE brings in other considerations.
Link state standards and local standards.
Implement local standards? How? HMP’s?
Options: zoning overlay districts, regional entity
Set up any minimum standards that provide predictability for new property owners.
Defining sensitive areas and working on specific minimum standards around those areas.

Audience: Open discussion to public comment and questions

Greg Sharp – Gail Robinson’s handout – page 5 – denied Schaller dock? Approved, permitted and built. Visual impact analysis – instructive slides that produce a better dock – across from Gillette Castle – conflict between kayakers and visual impact proponents – shortened dock to 99 feet with boat lift. Greg took ferry across and dock has 24 foot boat sitting 6 feet over water with reflection from windows – visual impacts are big. Better dock would have been longer rather than having boat lift. Best design possible would be the goal. Unwritten regulation – OLISP applies these regularly – agents have cataloged them and advise clients. State vs local issue – think about if you don’t have state being final arbiter, have you provided uniformity of application? Engineered? If each HMC trumps DEP, then how do we have uniformity? Shellfish Commissions and HMC’s in various towns don’t necessarily make consistent decisions.

Steve Bliven: Difficulty with absolute standards – looking for flexibility for best designs
Different levels of review standards – different entities.

Greg Sharp: CT Coastal Management Act is supposed to provide overarching consistency. DEP doesn’t deny? DEP can and does. If DEP doesn’t like application, doesn’t go to notice. DEP issues notice of intent to deny.

JH Torrance Downes: HMC – town develops standards in HMP, then that goes to DEP for approval. HMC doesn’t trump DEP b/c DEP has to approve their plan. It’s got to be a partnership between two entities. Different standards between towns – one size fits all. Each municipality comes up with individual plans – makes sense to address local issues.

Steve Bliven: State program to protect state values, local standards to protect local issues.

John Pinto: What Norwalk has put in place works for them and their shellfish resources – important to them. Likes idea of sign-off from a PE. Makes them more comfortable with approving an application.

Joel Severance – Chester HMC – Sinclair dock was denied at local HMC and withdrawn at state level. Guidelines for looking at docks – tasked HMC with guidelines for evaluating applications – to create a model. Don't care about shellfish in Chester, but they do in Norwalk. No regulations at all versus lots of regulations and some in the middle. Process fell apart. Looked at Chester and broke it up into Dock Management Units. Commercial vs sensitive areas. CRERPA looked at individual docks. Down to a few words – adopt a Torrance plan – how to evaluate docks within each unit. Will be available to use to evaluate docks.

Mike Griffin: DEP will use this as a guideline?

Joel Severance: Ala-carte menu to be used by locals

Betsey Wingfield: Needs to go through local adoption process and state approval.

Keith Henrickson: City of Groton HMC - If someone wants to build a dock, there is no requirement that they go to HMC. No requirement to coordinate.

Peter Francis: Applicants are required to submit application to HMC at time of submittal to DEP. Applicant needs to be consistent with local HMP. DEP reviews application for consistency with the approved plan.

Marcy Balint: Commission focuses on specific details and provides advice to DEP.

Betsey Wingfield: Comments from HMC that go beyond scope of their state-approved plan are advisory. Additional requirements of applicant are not binding and DEP often cannot require these changes, etc.

Joel Severance: Important that commissions interact with engineers/agents.

Steve Bliven: There appears to be interest at the local level to address this.

Chris Marchesi: There are very specific regulations in Lyme.

Sue Bailey: Lyme Guidelines were formed by the town to restrict sizes of docks, etc. There is a mechanism in place.

JH Torrance Downes: When Lyme standards were passed, under CGA sec.25-? then incorporated into 22a-361. Arbitrary the way they picked areas for size of docks, not necessarily based on resources, etc. The way they did it in 1978, not able to do this same way now.

David Blatt: Separate statute from HM. 22a-360 – allows Commissioner to establish boundaries at the request of the community. Adopted by Commissioner with not much process. Would have to do a plan and background, but HMC could request boundaries under 22a-360.

JH Torrance Downes: Go see his website – all the information is on there.
www.crerpa.org.

Mike Griffin: Harbor Master in Norwalk for long time – working on balance of environmental impacts and property owner rights, DEP does a good job. 98% approved. Is NOAA or DEP or part of state undergoing study to look at build-out and cumulative impact? When is too little too late? Locally, through HMP, need to bring suggestions to DEP based on navigation, aesthetics, etc. Are we expected to deal with this?

Steve Bliven: NOAA is not doing that. No information at federal level as to how many applications/docks there are. Found that there is very poor information about the number of applications – some don't keep good records. Florida - not good records. Problems and issues with application – often withdraw, then reapply. These are not generally well-recorded.

Peter Francis: We have good numbers in CT, but we work with applicants to modify applications, so we don't do many denials. Rather, we work with applicant. Either the application gets withdrawn, or the applicant works with us to modify their proposal to get it approved. In areas of sensitive resources with significant impacts, we have gone to denial.

Betsey Wingfield: Mike asked good questions. Science doesn't exist to set carrying capacity. Need to set it based on whole host of considerations. Need to address that.

Steve Bliven: Science on cumulative impacts is very weak. Resource-specific. Question of what we want is easier to address. Not same standard of proof as dock-by-dock process. Regional approach based on zoning is better.

Greg Sharp: In CT, to the extent that the land belongs to the state, not subject to local zoning. Regulating below HTL, three different statutes. HMC is the way to go. Zoning is questionable except under CCMA.

Peter Auster: Multiple perspectives on Public Trust Doctrine. Non-structural access. Others believe some type of structure is starting point. Develop shopping list for DEP to consider. Where is the starting point for this discussion? Burden of proof should be on applicant to demonstrate that something structural is needed. Rationale for why you need something more? Find some unambiguous statement from the state. Underlying assumptions on issues related to docks.

Bob Fromer: RE: zoning – town's boundary in New London extends to center of Thames River. One-page hand-out (distributed) on comments. (see attached). Nothing in record

about leaching from timber used in construction, environmental impacts of this, solar shading, structural analyses? Ability to craft structures regulations, but DEP has not done this. Statewide standards through regulations are needed for structures. Should investigate all regulations for docks in US. Craft a model regulation for the state to use. In interim, DEP has an application process. No request for information about chemical additives (i.e. CCA, etc) MSDS sheets? Leaching materials? DEP has not considered material alternatives – plastics, polycoated. Minimal impacts requires review of all alternatives. Problems with application: DEP issues a Notice of Tentative Determination. Don't ID materials used, including potential leachate. Notification of other agencies – DOA – doesn't know about CCA? NJ banned CCA in coastal areas. Maine – storm standards for structures. CT doesn't have these standards, and are mostly biologists – not engineers. Code of ethics – engineers have legal obligations.

Steve Bliven: Continuing request for standards that are applied and publicly known. Setting of standards and suggestion that investigation of standards in other states may be a valid idea.

Mike Griffin: Over the years, he has received paperwork that NOAA was involved in a 5-year review of CT Coastal Management program (312 Review). Incorporate guidelines into NOAA review? DEP is doing excellent job of reviewing applications. Capacity question on applications?

David Blatt: RE: 312 reviews and 309 – not sure how this review applies. This is actually an opportunity for NOAA to get comments on coastal program. Periodic review by NOAA for state's compliance with federal program.

Mike Griffin: How do we approach this?

Steve Bliven: Today's workshop is the way to start this discussion.

Mike Griffin: If DEP sends message that each community should deal with these issues and adopt guidelines, set up criteria, then ok.

Steve Bliven: Creation of local standards while coordinating with DEP is a good idea.

Dan Natchez: Defending DEP – rigorous review of applications. Go back to drawing board – what is reasonable? More attention to holistic view of application by DEP and ACOE. Not just issue of the day. Specific environmental concerns or HMC concerns often dominate application review – cumulative impacts, functional in terms of safety, structurally sound?

Final Statements from Panelists:

“The DEP are our friends” JHTD

Betsey Wingfield: Thank you!!! Appreciate level of discourse. Issues on table. Thanks Steve and Ruth and NOAA's support. Thanks OLISP staff for good workshop. Two questions:

What is reasonable access? Two options: 1) Further define this through dock regulations – broad public policy. 2) Litigate in court and develop case law in CT.

What do we want our shoreline to look like in the next 20 years?? We need local partners to weigh in on this issue – decisions not made in Hartford. Build-outs are helpful.

Pleased to go back to Commissioner McCarthy with this feedback and report on this open discussion.